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Governor Brown Signs Key Wildfire Prevention Measures; Cornerstone Piece Includes \$1 Billion For Critical Vegetation Management

This morning, Governor Jerry Brown signed a significant bill package to strengthen California's ability to prevent and recover from catastrophic wildfires. The measure of primary importance, **SB 901** (Dodd, Dem-Napa), increases the state's forest management activities and updates requirements for the maintenance and operation of utility infrastructure. The SB 901 author, Joint Wildfire Preparedness and Response Conference Committee Co-Chair Bill Dodd, hailed the bill as the "most comprehensive wildfire prevention and safety package the state has passed in decades."

Following some of the most deadly and destructive wildfires in the state's history last year, Governor Brown and legislative leadership began planning to make California more resilient against wildfire disasters. SB 901 is a wide-ranging measure that includes the following key components:

- \$1 billion to clear fire-prone trees and brush from across the state over the next 5 years; the \$1 billion is to be collected by the sale of greenhouse gas emission credits through California's cap-and-trade climate program.
- Establishes new wildfire prevention policies, including a streamlining of government approval to remove trees in heavy growth forests and exceptions to existing rules on the sizes of trees that can be removed, as well as new vegetation management grants for owners of smaller parcels of land to do the necessary work.
- SB 901 allows electric utilities to impose a surcharge on its customers to be used to then sell long-term bonds to cover wildfire liability and mitigation costs.

It requires an independent assessment of how much money a utility could afford to spend, otherwise known as a "stress test," before any additional costs are covered in a borrowing effort that is underwritten by a fee on ratepayers. For future fires, utility companies will have their share of fault determined by the Public Utilities Commission.

Fundamentally, the bill pays for clearing fire-prone trees and brush from across the state, while providing new relief for utility companies that have said wildfire costs could lead them to bankruptcy. The agreement on SB 901 provisions came only hours before a legal deadline for the

proposal's final language to be available for public review. Electric utilities argued the proposal did not do enough to address their fire-related costs. However, their opposition was not floor fight worthy. The most contentious financial discussions on SB 901 centered around the distress call sounded by investor-owned electric utilities of possible bankruptcy over wildfire liability costs. Pacific Gas & Electric Company led that charge, warning analysts that it faces up to \$2.5 billion in costs related to deadly fires that burned through Northern California in 2017. Last year alone, California insurers paid \$15 billion in claims for the North Bay Firestorm and Thomas Firenado.

Republican Senator Jim Nielsen (Chico) was quoted in the Governor's press release today stating, "Catastrophic wildfires have disrupted the lives of hundreds of thousands of Californians due to decades of neglect and failure to manage forests and wildlands. This legislation is an important step toward safeguarding lives, property and the state's watersheds." The 2018 wildfires are already approaching last year's total acreage burned – 1.4 million – with several months left in the calendar year. Four of California's five most destructive wildfires on record have burned in the last 15 years.

In addition to SB 901, the Governor signed the following substantive wildfire bills today:

AB 1772 (Aguiar-Curry, Dem-Napa) Fire Insurance Replacement Cost Recovery

This legislation extends the minimum time limit during which an insured may collect the full replacement cost of a loss relating to a state of emergency to 36 months. The bill requires that additional extensions of 6 months be provided to policyholders for good cause under that circumstance. The bill also requires that policy forms issued by an insurer be in compliance with these changes on and after July 1, 2019.

After losing a home or business in a fire resulting in a state of emergency, current law provides a policyholder with at least 2 years to rebuild their property and receive the full replacement cost coverage. Proponents of the bill argue 2 years is sometimes insufficient time for families to rebuild the insured property. The property insurance marketplace already provides for more than 2 years to rebuild as long as insured is showing it is acting in good faith.

AB 1800 (Levine, Dem-Marin) Fire Insurance Replacement Coverage

Current law defines the measure of indemnity for a loss under an open fire insurance policy and specifies time limits under which an insured must collect the full replacement cost of the loss. Current law prohibits, in the event of a total loss of the insured structure, a fire insurance policy from limiting payment of the replacement cost of property if the insured decides to rebuild at a location other than the insured premises. Current law also requires the measure of indemnity to be based upon the replacement cost of the insured property and prohibits it from being based upon the cost to repair or replace at a location other than the insured premises.

This bill prohibits, in the event of a total loss of an insured structure, a fire insurance policy from containing a provision that limits, on the basis that the insured has decided to rebuild at a new location or to purchase an already built home at a new location, payment of the building code upgrade cost or the replacement cost, including any extended replacement cost coverage, to the extent those costs are otherwise covered by the terms of the policy or any policy endorsement. A standard replacement cost homeowners' insurance policy covers the cost it takes to replace or

rebuild losses to a dwelling, up to the stated policy limits. There are other forms of insurance that provide coverage above the stated policy limit. Some insurers offer guaranteed replacement cost coverage that uses a policy limit for purposes of estimating what it would cost to replace the home and determining premium.

AB 1875 (Wood, Dem-Santa Rosa) Home Insurance Finder Establishment

This legislation requires the Department of Insurance (DOI) to establish the California Home Insurance Finder on its website to help homeowners connect with an insurance agent or broker for residential property insurance. The bill requires the Department to annually survey agents, brokers, and insurers about inclusion in the finder, and post participants' names, addresses, phone numbers, and websites, if available, to the finder on or before July 1, 2020. The bill requires the DOI to use social media and other tools to promote the finder, and to create materials in the most common languages used in California.

Most insurance companies offer extended replacement cost policies that are designed to provide the extra coverage needed by victims of large-scale disasters. For those that do not, this bill provides a resource for locating carriers that provide this coverage.

AB 1919 (Wood, Dem-Santa Rosa) State of Emergency Rental Housing Price Gouging

This bill, upon the proclamation or declaration of an emergency, makes it a misdemeanor for a person or business to increase the rental price advertised, offered, or charged for housing to an existing or prospective tenant by more than 10%. The bill extends the prohibition with regard to housing for any period that the proclamation or declaration is extended. The bill additionally makes it a misdemeanor for a person, business, or entity to evict a housing tenant after the proclamation of a state of emergency and then rent or offer to rent to another person at a rental price higher than the evicted tenant could be charged.

According to various media reports, in the 7 days that followed the 2017 North Bay Firestorm, the median rent in some affected counties increased over 35% and local newspapers reported anecdotal stories of homes coming onto the rental market at nearly double the price of other similar rentals in the same neighborhood.

AB 1956 (Limon, Dem-Santa Barbara) Fire Prevention Local Assistance Grant Program

Current law requires the Department of Forestry and Fire Protection to establish a working group to identify potential incentives for landowners to implement prefire activities in state responsibility areas and urban-wildland communities and to identify all federal, state, or local programs, private programs, and any other programs requiring a cost share that involves prefire activities. This bill would repeal this law.

The state's insurance trade organizations explain that activities proposed in this bill reduce future risk and increase resilience the next time disaster strikes. Improved forest management, increased home and community mitigation efforts, and enhanced emergency response systems are key components to address and recover from disasters.

AB 2091 (Grayson, Dem-Concord) Prescribed Fire Burns Insurance Pool

This bill requires, on or before January 1, 2020, and until January 1, 2025, the Department of Forestry and Fire Protection, in consultation with the Department of Insurance, to develop an

insurance pool for prescribed burn managers. The measure requires only certified prescribed burn managers to have access to the insurance pool. The goal of the insurance pool is to increase the use of prescribed fire; reduce the cost of insurance for certified prescribed burn managers and landowners; and, provide adequate liability protection for lives and property when conducting prescribed burns.

According to the author, liability and the cost of insurance are often cited as significant impediments to the expanded use of prescribed fire. Many states have taken steps to adjust liability standards and insurance regulations to encourage the use of prescribed fire.

AB 2594 (Friedman, Dem-Los Angeles) Fire Insurance Lawsuit Filing Period

Current law imposes a 12-month statute of limitations in which to bring suit under a fire insurance policy or a county fire insurance policy after a loss. Current law makes it a misdemeanor for an insurer or agent to countersign or issue a fire policy that varies from the California standard form of policy. This bill revises the standard forms of policy and extends the period in which to bring a lawsuit to 24 months after the inception of the loss if the loss is related to a state of emergency.

This bill addresses a potential conflict between two sections of the Insurance Code relating to homeowners' insurance claims. One provision in the required contract language for homeowners' policies in California establishes a 12-month statute of limitations for a policyholder with a claim dispute to sue their insurer. A second provision permits a homeowner up to 24 months to complete the repair of the home and collect the full replacement value. This bill aligns the statute of limitations with the 24-month period to complete repairs and collect full replacement value.

AB 2911 (Friedman, Dem-Los Angeles) County Fire Safety Ordinance Requirement

Current law authorizes a local agency, at its discretion, to exclude from specified requirements governing fire risk reduction an area identified as a very high fire hazard severity zone by the Department of Forestry and Fire Protection within the jurisdiction of the local agency, following a finding supported by substantial evidence that those requirements are not necessary for effective fire protection within the area. This bill eliminates this exemption and requires a local agency to transmit a copy of any ordinance adopted relative to these provisions to the Board of Forestry and Fire Protection within 30 days of adoption.

This bill is in response to the 2017 wildfire season. More than 40% of California is considered a high fire risk severity zone. Landowners in these areas are required to follow fire prevention practices. Cities within these areas are also required to adopt a safety element in their general plans to reduce risk and prevent wildfires. AB 2911 attempts to improve the fire safety of communities in high fire risk severity zones by updating past fire safety legislation to reflect the severe nature of the year-round wildfire season.

SB 30 (Lara, Dem-Bell Gardens) Insurer Climate Change Investment

This bill requires the Insurance Commissioner to convene a working group to identify, assess, and recommend risk transfer market mechanisms that promote investment in natural infrastructure to reduce the risks of climate change related to catastrophic events, create incentives for

investment in natural infrastructure to reduce risks to communities, and provide mitigation incentives for private investment in natural lands to lessen exposure and reduce climate risks.

Creating incentives and means for innovative, new insurance products that can flourish in California under increased wildfire activity, which some attribute to climate change, will take time, leadership, and a diverse group of stakeholders, experts in the marketplace inform. Insurers advise that there is activity in this space occurring around the globe already.

SB 824 (Lara, Dem-Bell Gardens) Homeowners Insurance Renewal

This bill prohibits an insurer from canceling or refusing to renew a policy of residential property insurance for at least the next 2 annual renewal periods, but no less than 24 months of coverage from the date of the loss, after the declaration of a state of emergency based solely on the fact that the insured structure is located in an area in which a wildfire has occurred, with respect to an insured property located within or adjacent to the fire perimeter. An insurer cannot cancel or refuse to renew a policy of residential property insurance for a property located in any ZIP Code within or adjacent to the fire perimeter.

The original concern was that the bill's initial mandates would have a chilling effect on the entire insurance market, but now it contains some exceptions, such as allowing insurers to cancel in the case of fraud, making it more palatable to insurers.

SB 894 (Dodd, Dem-Napa) Homeowners Insurance Combined Coverage

SB 894 provides wildfire victims the option to combine some coverages within their homeowner policy to offset the underinsured amount in their home. Consumers qualify for this provision if they meet 3 tests: 1) it is following a declared disaster; 2) they suffer a total loss; and, 3) they are underinsured in their primary dwelling. SB 894 also provides homeowners suffering a total loss from a fire 2 years of renewal offers, instead of the current one year of renewal.

The Department of Insurance claims many survivors after a major disaster or catastrophic event, such as the 2017 wildfires, do not rebuild or replace the total loss property in the period of only one renewal. Most are not able to rebuild for a period of 24 months or longer. In some losses, the survivor may be underinsured for the primary structure coverage but may have unused coverage in other structures coverage. By allowing them to combine their coverages, they may be able to offset the underinsured amount, which in some cases might allow them to rebuild their home. Insurers already largely allow policyholders extended period of time to rebuild beyond what the law requires, as long as they do so in a good faith manner.

SB 917 (Jackson, Dem-Santa Barbara) Landslide Insurance

Under current law, an insurer is liable for a loss of which a peril insured was the proximate cause, although a peril not contemplated by the contract may have been a remote cause of the loss. Under current law, an insurer is not liable for a loss of which the peril insured was only the remote cause. This bill requires coverage to be provided if a loss or damage results from a combination of perils, one of which is a landslide, mudslide, mudflow, or debris flow if an insured peril is the efficient proximate cause of the loss or damage and coverage would otherwise be provided for the insured peril.

This could lead to increased costs for all policyholders, or a decision by insurers to limit their books of homeowners insurance. A major sticking point with the bill was whether coverage “shall be provided” versus “may not be denied.” Insurers prefer the latter.

SB 1260 (Jackson, Dem-Santa Barbara) Prescribed Fire Burns

This bill is an omnibus fire prevention and forestry management bill that promotes long-term forest health and wildfire resiliency. The bill authorizes federal, state, and local agencies to engage in collaborative forestry management, creates new opportunities for public and private land managers to mitigate wildfire risks, and enhances the Department of Forestry and Fire Protection’s (CalFire) role in identifying wildfire hazards as local governments plan for new housing and neighborhoods. It also expands the flexibility of CalFire to establish proportionate liability in advance of prescribed burns including an option to purchase insurance.

Poor management policies that interrupted natural forest lifecycles have left forests vulnerable to catastrophic wildfires. This bill reorients California’s forest management policies toward long-term forest health and fire resiliency by helping promote long-term forest health, increasing support to local entities with experience in forest management, prescribed fire, and public safety, and enhances CalFire’s role in identifying wildfire hazards in the planning process undertaken by local governments.

Governor Says Insurers Fared Better Than Utilities On Wildfire Bill

California lawmakers did not give Governor Jerry Brown the full wildfire legislation he sought, particularly a provision to address potential liabilities for utilities from wildfires, and the Governor told reporters this week “it’s hard to say” if they ever would. **SB 901** (Dodd, Dem-Napa), and signed by the Governor today, includes measures considered beneficial for utilities such as Pacific Gas & Electric Corporation (PG&E).

But, the wide-ranging bill left out the issue of inverse condemnation, in which utilities can be held liable for costs if their equipment is found to have caused a fire — regardless of whether they followed safety rules. The Governor had pushed a proposal that would have given utilities relief from the rule, which was opposed by insurance companies, trial lawyers, and fire victims.

“The insurance companies and the trial lawyers are very powerful. This time they did better than the electric utilities,” Brown said in an interview in San Francisco at the Global Climate Summit. “Better in the sense that they got what they wanted and the utilities got a lot of what they wanted but not everything.” In addition to still requiring electric utilities to be held strictly liable for fires their equipment causes, insurers strongly support the 5-year \$1 billion annual appropriation to remove dead trees and vegetation in California forests that fuel wildfires.

The bill was still a victory for PG&E, which may owe as much as \$17.3 billion for the blazes that ravaged the state in 2017 alone. SB 901 allows it to pass some of its wildfire liability costs in rates, as well as seek bond authority for these financial obligations.

Of Note: PG&E Started Marin County Fire

Marin County's top fire official announced that a downed Pacific Gas & Electric (PG&E) powerline sparked a wildfire that burned more than 150 acres and threatened dozens of homes near the community of Lagunitas. "The investigators determined the cause to be a power line that came down into the grass," Marin County Fire Chief Jason Weber said in an interview last week. The power line that ignited the Irving Fire was located on Barnabe Mountain in Samuel Taylor State Park.

There was a PG&E power outage affecting customers on Arroyo Road and Portola Avenue at the time the fire started on September 10. The Irving Fire is now fully contained. No structures were damaged or destroyed. No residents or firefighters suffered injuries.

Largest Wildfire Of In California History 100% Contained; The Mendocino Complex

The Mendocino Complex, a pair of wildfires that erupted in Lake County in late July and went on to become the largest recorded fire complex in California history, has been reported 100% contained, the United States Forest Service said Wednesday. The two fires burned a combined 459,123 acres, destroyed 280 structures, including 157 residences, killed one firefighter and injured 4 others, the latest incident report says.

At full containment, there are still 22 miles of fireline to repair and some fire activity to monitor. According to the Forest Service, the goal now is to reduce erosion and other impacts from suppression activities. Some areas within Mendocino National Forest remain closed out of concern for public safety, as detailed in an order issued September 2. The closures are in effect through December 31.

A pair of wildland fires, both the 410,000-acre Ranch Fire and the nearly 49,000-acre River Fire ignited July 27. The cause of each is still under investigation, officials say. Within days of sparking, the Mendocino Complex forced thousands of residents to evacuate. The fires burned through Mendocino, Lake, and Colusa Counties for nearly 2 full months. Smoke from the blazes carried into the Sacramento area and led to unhealthy air quality throughout several Northern California counties.

The Ranch Fire on its own is by far the largest recorded blaze in state history, soaring past the 281,893-acre Thomas Fire that burned in Southern California from December through January.

Governor Signs Insurance Payment Interception Bill

On Monday, Governor Jerry Brown signed **AB 2802** (Friedman, Dem-Los Angeles), which requires an insurer to check for unpaid child support obligations before issuing payments related to life insurance policies, annuities, disability income policies, and property insurance policies. The legislation also requires an insurer, if the recipient is an obligor, to redirect (commonly referred to as "intercept") that payment to the Department of Child Support Services (DCSS) to satisfy the unpaid child support obligation. Additionally, the measure provides that payments to replace or repair lost or damaged property cannot be redirected.

Furthermore, the bill requires the Department to provide an insurer with either a child support lien or an income withholding order before the insurance payment is issued to DCSS. Importantly, it provides an insurer, its agents and employees, and the insured immunity from any liability arising out of the redirection of insurance payments authorized by the bill, as well as permits an insurer to satisfy the obligation to check for unpaid child support through a third party service.

Seven states currently have mandatory child support intercept programs of some kind, which include Texas, New Jersey, Oklahoma, Pennsylvania, Rhode Island, Massachusetts, and Oregon. All other states participate voluntarily. In California, the total amount of unpaid child support is \$18 billion and over \$116 billion in unpaid child support is due to families across the country. In 2002, DCSS created a voluntary program in which insurers could participate in matching persons who receive insurance claim payments with child support obligors and provide an opportunity to "intercept" those payments to pay past due child support.

The Assembly passed the final version 72-0 and the Senate voted unanimously in favor.

Governor Inks Life Insurance & Longterm Care Measures

On Wednesday, Governor Jerry Brown signed **AB 2634** (Chau, Dem-Arcadia), which requires an insurer to provide a 90-day notice to the owner of a flexible premium life insurance policy prior to an increase in the cost of insurance or administrative charge and to provide an illustration or illustrations showing the impact on the policy values and necessary premium payments before and after the increase.

Flexible premium policies look like an investment account paired with a life insurance policy. Premium is deposited into the account and charges are deducted automatically. The balance is the cash value which builds with premium contributions and investment earnings or declines if the charges exceed the contributions and earnings. The policy remains in force so long as the policy has cash value. An illustration is a ledger that describes how a policy should perform given a set of assumptions as applied to the policy features.

On the same day, Governor Brown signed **SB 1248** (Gaines, Rep-El Dorado Hills), which permits the Department of Healthcare Services to certify a Partnership for Long-term Care policy with a reduced per diem benefit of at least \$100 per day for a nursing facility, residential care facility, and home care and community-based services, if the policy provides a lifetime maximum benefit of not less than \$73,000. It also permits an insurer to offer a Partnership policy with these reduced benefits only if the insurer also offers the applicant policy benefits that provide at least a lifetime maximum benefit that is equivalent in dollars to at least 365 times 70% of the average daily private pay rate for a nursing facility and a nursing facility per diem benefit of no less than 70% of the average daily private pay rate for a nursing facility.

The Partnership certifies special long-term care insurance (LTCI) policies are intended for middle-income consumers who may need long-term services and supports provided through the Medi-Cal program when they exhaust their policy benefits. The program brings together private insurers and state agencies to offer LTCI insurance products. For every dollar of benefit received under a Partnership policy, a dollar is disregarded for the purposes of determining Medi-Cal

eligibility and protected from Medi-Cal's estate recovery program. The insured is able to enroll in Medi-Cal's LTCL program and keep some assets that would normally be spent down. But, Partnership standards have not kept up with market trends and the policies have grown too expensive for its target population. This bill gives middle-income consumers more affordable options and greater access to Partnership policies, according to the author.

Workers' Compensation: CSLB Considers Work Comp Requirement For New Contractor Classifications

On Thursday, the Contractors State License Board (CSLB) discussed a measure on its 2019 legislative agenda. The CSLB is considering legislatively mandating workers' compensation for specified license classifications.

To more accurately assess the issue of workers' compensation avoidance through the filing of false exemptions, the CSLB Enforcement Division conducted a Workers Compensation Pilot Program in 2017. CSLB contacted a sample of contractors in 4 targeted classifications that perform outdoor construction likely to require multiple workers: C-8 (Concrete), C-12 (Earthwork/Paving), C-27 (Landscaping), and D-49 (Tree Trimming). The survey determined that a minimum of 59% of the contractors investigated had false workers' compensation exemptions on file with CSLB. There is, therefore, a concern that many of the exemptions on file with CSLB are false, according to Enforcement Division staff.

In late 2017, the CSLB Enforcement Committee created a two-person Advisory Subcommittee comprised of two CSLB Board members to develop strategies to address workers' compensation insurance avoidance. CSLB staff are working with multiple state agencies to enhance workers' compensation enforcement, including the Employment Development Department, California Occupational Safety and Health Administration, Division of Labor Standards Enforcement, Department of Insurance, and State Compensation Insurance Fund.

At its June 2018 meeting, the Board discussed mandating workers' compensation insurance for specific license classifications likely to employ workers (as is now in place for the C-39 Roofing classification) and precluding licensees from filing a new workers' compensation exemption with CSLB for one year if they are found to have employed workers without a workers' compensation policy. At its August 2018 meeting, the CSLB Legislative Committee voted to make pursuing the necessary legislation to achieve these goals a 2019-2021 Strategic Plan objective. This proposed Strategic Plan objective to consider legislation mandating workers' compensation insurance for specified license classifications will be presented to the full Board in September 2018.

Many Chamber of Commerce Job Killer Bills Defeated In 2018 Session

The now concluded session of the Legislature was arguably the most liberal in California. Driven by the majority party's anti-Trump Administration efforts, the Legislature's Democrats introduced and passed hundreds of bills, many of them directly aimed at setting California apart from what Trump and the Republican United States Congress have been considering.

The legislative session's politically left tone did have an exception. The California Chamber of Commerce performed better than usual killing the liberal bills it had on its influential **Job Killer** list. Over the last two decades, which is the age of the list, the CalChamber and allied business groups have had a 90% kill rate. But this year, the Chamber was more successful, killing or watering down all but one of the 29 bills that it targeted. Most did not leave a voting record for Legislators in the form of a roll call.

The one survivor had a well-known labor advocate author, Assembly Member Lorena Gonzalez-Fletcher (Dem-San Diego). **AB 3080** prevents employers from imposing arbitration agreements as a condition of hiring employees, which is naturally most significant to employers. It was framed as a way of protecting women from sexual harassment on the job by making it easier for them to sue and is the major piece of legislation that legislators introduced in response to the nationwide wave of sexual harassment allegations. The Chamber deployed all resources to inform legislators this bill is a personal injury attorney measure. Ultimately, though, AB 3080 could be preempted by federal arbitration law.

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